STATE OF MICHIGAN

COURT OF APPEALS

CHRISTOPHER SIMS,

Plaintiff-Appellant,

v

NIJANAND, L.L.C., d/b/a JIM WILLIAMS MOTEL,

Defendant-Appellee.

UNPUBLISHED
November 30, 2010

No. 293437
Kent Circuit Court
LC No. 08-007532-NO

Before: SAWYER, P.J., and FITZGERALD and SAAD, JJ.

PER CURIAM.

In this negligence action, plaintiff appeals an order that granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). For the reasons set forth below, we affirm.

I. FACTS

On December 19, 2010, plaintiff slipped and fell while walking on a handicap ramp in a motel parking lot owned by defendant. After he fell, plaintiff realized he slipped on ice. Plaintiff filed a complaint against defendant and alleged that the ice was not open and obvious and that defendant violated its statutory duty under MCL 554.139. Defendant moved for summary disposition and argued that the ice was open and obvious and that evidence did not establish a violation of MCL 554.139. The trial court agreed with defendant and granted its motion for summary disposition.

II. ANALYSIS

A. Open and Obvious Condition

A premises owner has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). Under the open and obvious doctrine, a premises owner may avoid liability if an average person with ordinary intelligence would have discovered the dangerous condition upon a casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). A premises owner is not required to protect an invitee from open and obvious dangers. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516-517; 629 NW2d 384 (2001). However, "if special aspects of a condition make

even an open and obvious risk unreasonably dangerous, the premises possessor has a duty to undertake reasonable precautions to protect invitees from that risk." *Id*. at 517. "Special aspects" are typically not present for ordinary open and obvious conditions. *Id*. at 518. Nevertheless, if the risk of harm is unreasonably dangerous or is unavoidable under the circumstances, the open and obvious doctrine will not protect the premises owner from liability. *Id*. at 517-518.

Here, the ice on which plaintiff slipped and fell was open and obvious and no special aspects of the condition made it unreasonably dangerous. The record shows that plaintiff lived at the motel for several years and was familiar with the premises. On previous occasions, plaintiff had seen ice and snow where he fell and he knew that water fell from the roof and froze in that area. A reasonable person would have been aware of the potentially dangerous conditions and the ice was open and obvious. *Novotney*, 198 Mich App at 474-475. Further, the ice was not unreasonably dangerous. It did not present a substantial risk of death or serious injury like the condition discussed in *Lugo*—an unguarded 30-foot deep pit in the middle of a parking lot. *Lugo*, 464 Mich at 518. And the record does not reflect that the patch of ice was effectively unavoidable. Accordingly, plaintiff failed to establish a genuine issue of material fact that the ice was not open and obvious.

B. MCL 554.139

Plaintiff further claims that defendant failed to satisfy its statutory duty under MCL 554.139. Under the statute, a lessor covenants "[t]hat the premises and all common areas are fit for the use intended by the parties." MCL 554.139(1)(a). Our Supreme Court rejected this argument under similar facts in *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 430; 751 NW2d 8 (2008). Specifically, the Court ruled:

> While a lessor may have some duty under MCL 554.139(1)(a) with regard to the accumulation of snow and ice in a parking lot, it would be triggered only under much more exigent circumstances than those obtaining in this case. The statute does not require a lessor to maintain a lot in an ideal condition or in the most accessible condition possible, but merely requires the lessor to maintain it in a condition that renders it fit for use as a parking lot. Mere inconvenience of access, or the need to remove snow and ice from parked cars, will not defeat the characterization of a lot as being fit for its intended purposes.

The fact that plaintiff slipped and fell on defendant's premises is insufficient to prove the parking lot was not fit for its intended use. Plaintiff has failed to show his injury was the result of more than a customary weather condition and he has not established a genuine issue of material fact to show a violation under MCL 554.139.

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Henry William Saad